

O.S. SINGH AND ANOTHER
v.
UNION OF INDIA AND ANOTHER

OCTOBER 12, 1995

[S.C AGRAWAL AND G.B. PATTANAİK JJ.]

Service Law.

I.P.S. Recruitment Rules 1954—R 4 & 6.

I.P.S. (Appointment by Promotion) Regulation 1955—Regulation 5,7,9.

Promotion—State Police Service to I.P.S.—Delay due to adverse remarks—Remarks expunged—Retrospective appointment given—Benefit given in fixing year of allotment and inter-se seniority.

I.P.S. (Regulation of Seniority) Rules—1954—R 3 (2) (b)—Suffers from 'casus omissus'.

Statutory interpretation of R 3 (2) (b)—'Such officiation' to mean 'Substantive appointment' in cases where promotee did not officiate in senior post prior to date of substantive appointment.

'Casus omissus'—Judicial decisions—Two trends—Traditional approach that courts cannot legislate—Other to find the intention of Parliament.

Year of allotment—To be related to date of substantive appointment—Competent authority can assign.

Distinction between—'Substantive' and 'officiating' appointment.

Appellant was in State Police Service. His name was not included in the select lists for 1974 to 1976 for promotion to I.P.S. from State Police Service due to adverse remarks. On representation, the remarks were expunged and his name was included in select list in 1977. He officiated in a senior post in the I.P.S. from March 30, 1998. Appellant filed writ petition before H.P. High Court in 1984 for reconsideration of his case. The High Court, relying on *A.K. Chowdhry v. State of Bihar and Ors.*, [1984] 2 S.C.R. 299, passed an interim order whereon the State Govt. recommended the Appellant's name to the Union Govt. which decided to appoint

A him to the I.P.S. with effect from March 31, 1976 and assigned the year of allotment as 1970 based on R 3(3)(b) of Seniority Rules and *inter-se* seniority the Appellant was placed above Respondent No. 4. Aggrieved, by the fixation seniority Respondent No. 4 challenged the Union Govt.'s order before the Central Administrative Tribunal, Principal Bench.

B The Tribunal, relying on R 3(3) (b), of the Seniority Rules, held that the year of allotment must be related to continuous officiation of the junior most officer in a senior post from a date earlier than the Appellant. Since Respondent No. 4 was the junior most officer, the year the allotment of the Appellant was to be 1973 and he was held to be junior to Respondent No. 4 who was a direct recruit.

C From the said order of the Tribunal two Appeals were filed before this court - one by the Appellant and the other by the Union of India. On behalf of the appellants it was contented that the Tribunal erred in taking into account continuous officiation only, overlooking the retrospective date of appointment and the appellant having been reconsidered and appointed from 31-3-76, his seniority is to be related to that date and the period from March 31, 1976 till March 30, 1978 cannot be ignored. Respondent No. 4 relied on *Syed Khalid Rizvi's* case, J.T. Supp 1 SC 169, and submitted that the year of allotment must be as per Rule 3(3)(b) of Seniority Rules and retrospective appointment is of no consequence.

E Allowing the Appeals and setting aside the order of the Tribunal, this Court

F HELD : 1. The Tribunal was in error in arriving at the year of allotment as 1973 based only on appellant's continuous officiation in a senior post with effect from March 30, 1978 and ignoring the Union Govt's decision to appoint him retrospectively with effect from March 31, 1976. Seniority of Appellant *vis-a-vis* Respondent No. 4, is not to be based on factual officiation but on actual date of appointment. Benefit of reconsideration cannot be taken away for determining year of allotment and seniority. The order of Union Govt. is not arbitrary and follows the scheme of Rule 3 (3) (b) of Seniority Rules. [269-B-C]

H *Syed Khalid Rizvi & Ors. v. U.O.I. & Ors.*, J.T. Supp 1, 169, distinguished.

A.K. Chowdhry v. State of Bihar & Ors., [1984] 2 SCR 299, relied on. A

2. 'Officiating continuously in a senior post' in R. 3(3) (b), of Seniority Rules, is to be construed to mean holding a senior post on officiating basis prior to substantive appointment on it. Since a person substantively appointed to a post cannot be treated as officiating on the post after he has been substantively appointed on that post, the said expression cannot be construed as referring to the period of officiation subsequent to the date of substantive appointment. For ascertaining the period of continuous officiation on a senior post for assigning year of allotment to a promotee officer, R 3 (3) (b) of the Seniority Rules, has to be read with Explanation 1. Thus two conditions are required for determination of seniority - (1) inclusion of name in select list and (2) continuous officiation on a senior post from a date prior to date of his substantive appointment. [271-A-D] B C

3. Substantive appointment confers on a person so appointed a substantive right to the post unlike officiating appointment which is only transitory in character and under ordinary law of master and servant is terminable at any time. [270-H] D

Purshottam Lal Dhingra v. U.O.I., [1958] SCR 828, referred to.

4. A literal interpretation of R. 3(3) (b), of Seniority Rules would lead to the result that the Rule only envisages cases where an officer before his substantive appointment officiated in a senior post and does not make any provision in respect of a situation where an officer is appointed substantively without having officiated in a senior post prior to that appointment. Thus construed R. 3 (3) (b) of Seniority Rules would suffer from 'casus omissus'. [271-F] E

5. Though the Court cannot legislate for 'casus omissus' it cannot so interpret a statute to produce a 'casus omissus' where there is really none. [272-A] F

6. If R. 3(3)(b) of Seniority Rules is read so as to effectuate the intention of the rule making authority, then the consideration referred to therein which apply in matter of assignment of year of allotment where officer has officiated prior to date of substantive appointment must necessarily apply for the purpose of assigning the year of allotment of an officer who is substantively appointed without being required to officiate. In such a case year of allotment will have to be determined with reference to the year of allotment of the juniormost officer directly recruited who officiated continuously H

A in a senior post from a date earlier to the date of substantive appointment of the promotee officer. [272-H, 273-A-B]

B 7. The expression 'such officiation', in context a promotee officer in R 3 (3)(b), will have to be construed as meaning 'substantive appointment' in cases where the promotee officer did not officiate in the senior post before his substantive appointment. This construction would govern a case where the error in matter of promotion is rectified and the promotee officer is given substantive appointment from an anterior date and year of allotment has to be assigned to him having regard to date from which the substantive appointment becomes operative even if he did not officiate in a senior post prior to the date of substantive appointment. Even if one proceeds on the basis that there is a 'casus omissus' in R 3 (3)(b), it only means that the Seniority Rules are silent in the matter of assignment of year of allotment of such a promotee officer and in that event the competent authority can assign the year of allotment to such an officer in exercise of its administrative discretion. [273-C-E, G-H]

Sant Ram Sharma v. State of Rajasthan, [1968] 1 SCR 111, relied on.

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9337-38 of 1995.

From the Judgment and Order dated 24.5.93 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.479 of 1986.

Pramod Swarup for the Appellant in C.A. No. 9337/95.

F V.R. Reddy, Additional Solicitor General, A. Subba Rao and P. Parmeswaran for the Appellant in C.A. No 9338/95 & Respondent in C.A. No. 9337/95.

G Romesh Gautam, Vishwa Kirti and Ms. Manjula Gupta for the Respondent No. 4.

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. Delay condoned.

H Leave granted.

These two applications are directed against the judgment dated 24.5.93 of the Central Administrative Tribunal in O.A. No. 479/86, one at the instance of Union of India and the other at the instance of an employee Shri O.S. Singh. Perennial dispute of determining *inter se* seniority between a direct recruit and a promotee in the Indian Police Service and the ticklish issue of year of allotment has cropped up again in these two applications. The appellant, Shri O.S. Singh had joined as Deputy Supdt. of Police on 26.11.1965 after being selected by the State Public Service Commission. The recruitment to the Indian Police Service is made under IPS (Recruitment) Rules, 1954, (hereinafter referred to as "The Recruitment Rules"). Under Rule 4 thereof recruitment is made both by competitive examination as well as by promotion of substantive member of a State Police Service. Under Sub-Rule(2) of Rule 6 of the Recruitment Rules, the initial appointment of person recruited to the service under Clause (a) of Sub-Rule (1) of Rule 4, shall be in the junior time scale of pay and under Sub-Rule (3) of Rule 6 the initial appointment of person recruited to service under Clause (b) of Sub-Rule (1) of Rule 4 shall be in the senior time scale of pay. Thus an officer of the State Police Service on being promoted is recruited in the senior time scale of pay of the Indian Police Service. Rule 9 of the recruitment Rules provides that the Central Government may on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the service persons by promotion from amongst the substantive members of a State Police Service in accordance with such regulation as the Central Government after consultation with the State Government and the Commission from time to time make. In pursuance of Sub Rule (1) of Rule 9 of the Recruitment Rules, the Regulation has been framed for appointment by promotion to the Indian Police Service called the Indian Police Service (Appointment by Promotion) Regulation, 1955 (hereinafter referred to as "The Promotion Regulation"). Under the IIIrd Proviso to Sub Regulation (2) of Regulation 5 of the Promotion Regulation, a member of the State Police Service is entitled to be considered for being included in the Select List if he is continuing in the State Police Service on a substantive basis and has completed not less than 8 years of continuous service in the post of Deputy Supdt. of Police or any other post or posts declared equivalent thereto by the State Government by the 1st day of January of the year in which the Committee meets for preparation of the Select List. The Select List which is approved by the Commission forms the Select list of the members of the

- A State Police Service under Sub Regulation (3) of Regulation 7 of the Promotion Regulation. In accordance with Regulation 9 of the said Promotion Regulation appointment to the Indian Police Service is made by the Central Government on the recommendation of the State Government in the year in which the names of the members of the State Police Service
- B appeared in the Select List, for the time being in force. The name of Shri O.S.Singh had not been included in the Select List prepared during 1974 to 1976, as some adverse remarks were there against him in the C.R. though one of his junior in the State Police Service Shri Kali Charan was included in the Select List on 12th July, 1974. On a representation being filed for expunction of the adverse remarks, by the appellant Shri O.S.Singh, the
- C Government expunged the same on 1.1.1976. Said Shri Singh was allowed to officiate against a senior post in Indian Police Service with effect from 30.8.78 after he was brought on to the Select List in the year 1977. As his case had been overlooked for being brought on to the Select List during 1974-1976 on the basis of certain adverse entries and the adverse entries
- D stood expunged by the Government, a Writ Petition was filed in the year 1984 in Himachal Pradesh High Court seeking *mandamus* to the State Government to re-consider the case of Shri Singh. The said Writ Petition was registered as C. Writ Petition No. 661 of 1984. By an interim order dated 18.12.1984 the High Court directed that the Competent Authority would re-examine the case of Shri O.S. Singh in the light of the decision
- E of this Court in *Amar Kant Chowdhary v. State of Bihar & Ors.*, [1984] 2 SCR 299. The State Government intimated the High Court on 11.3.1985 that the Selection Committee has re-considered the case of Shri O.S. Singh and necessary recommendation in being made to the Union Government for appropriate orders. The High Court, therefore, directed that the final
- F decision be taken in the case of Shri O.S. Singh on the recommendation of the Selection Committee. On 5th July, 1985, the Standing counsel appearing for the Union of India intimated the Court that the Government of India has taken the decision to appoint Shri O.S. Singh to the Indian Police Service with effect from 31.3.1976 and that his seniority will be determined
- G accordingly. In view of the aforesaid decision of the Government of India the Writ Petition filed by Shri Singh became infructuous and was withdrawn with the liberty to approach the Court again, if any part of the relief is not finally granted. The Government of India by its letter dated 23rd July, 1985, intimated Shri O.S.Singh that his year of allotment under
- H Rule 3 (3) (b) of the IPS (Regulation of Seniority) Rules, 1954, (hereinafter

referred to as "the Seniority Rules") is 1970 and the *inter se* seniority of the officers was also indicated therein whereunder Shri Singh was shown senior to Shri Ashwini Kumar, the respondent No. 4 in Special Leave Petition No. 5394 of 1993. The said respondent No. 4 filed an application before the Central Administrative Tribunal, Principal Bench, New Delhi, challenging the aforesaid order of the Government of India dated 23rd July, 1985. The Tribunal having quashed the aforesaid order of the Government of India and having directed to place Shri Ashwini Kumar above Shri Singh in the Seniority List of IPS officers in the State of Himachal Pradesh, the two Special Leave Petitions have been filed, as already stated. The Tribunal on an analysis of the provisions of the Seniority Rules, more particularly Rule 3(3)(b) thereof came to the conclusion that Shri Singh having started continuous officiation in the senior post on 30.3.1978, his year of allotment must be determined by finding out who was the junior most officer recruited to the service in accordance with Rule 7 who officiated continuously in a senior post from a date earlier than Shri Singh. He having found that Shri Ashwini Kumar was the junior most officer amongst the direct recruits who had officiated continuously in a senior post earlier to 30.3.78, the year of allotment of Shri Singh must be determined according to the year of allotment of Shri Ashwini Kumar. And as such, the Tribunal held that it must be 1973. Consequently, the Tribunal held Shri Ashwini Kumar to be senior to Shri Singh.

Shri Reddy, learned Additional Solicitor General contended that the Tribunal committed gross error of law in not taking into account the retrospective appointment of Shri Singh to the Indian Police Service with effect from 31.3.1976 and determined the year of allotment of Shri Singh only by taking into consideration his continuous officiation in a senior post with effect from 30.3.1978, by literally applying Rule 3(3)(b) of the Seniority Rules. According to learned Additional Solicitor General the case of Shri Singh having been reconsidered after expunction of the adverse entries in pursuance to the interim direction of the High Court and the Government of India having appointed said Shri Singh to the Indian Police Service w.e.f. 31.3.1976, the conclusion is inescapable that his seniority has to be determined on the basis that he is borne in the cadre in the Indian Police Service with effect from 31.3.1976 and by no stretch of imagination the period from 31.3.1976 till 30.3.1978 can be ignored. Mr. Gautam, learned counsel appearing for respondent No. 4, Shri Ashwini Kumar, on the other hand contended that in view of the decision of this Court in *Syed Khalid Rizvi &*

- A *Ors. etc. v. Union of India & Ors. etc.* (Judgment Today (Suppl.) 169), the year of allotment of Shri Singh has to be determined in accordance with Rule 3 (3)(b) of the Seniority Rules and that being so said Shri Singh having continuously officiated in a senior scale of pay in the Indian Police Service with effect from 30.3.1978, the Tribunal rightly determined the
- B year of allotment of Shri Singh as well as the *inter se* seniority of Shri Singh and Shri Ashwini Kumar. He further contended that the retrospective appointment of Shri Singh to the Indian Police Service with effect from 31.3.1976 is of no consequence for determining his year of allotment and the same has to be determined under Rule 3(3)(b) of the Seniority Rules and the Tribunal has not committed any error by holding Shri Ashwini
- C Kumar to be senior to Shri O.S. Singh.

In view of the rival submissions at the Bar the question that arises for consideration is whether the year of allotment of an officer of the State Police Services has to be determined in accordance with Rule 3(3)(b) of

D the Seniority Rules notwithstanding the fact that his case had been ignored from consideration erroneously and later on the mistake was rectified and he was appointed to the Indian Police Service with effect from an anterior date on which date he would have otherwise been entitled to be appointed. To appreciate this point at the cost of repetition it would be appropriate

E to notice the admitted facts. Shri O.S. Singh who was a Deputy Supdt. of Police in the State Police Service on substantive basis and had completed more than 8 years of service by the year 1974 and could have been placed in the Select List but for the adverse entries in his C.R. The adverse entries having been expunged he had approached the High Court of Himachal

F Pradesh for a direction to the appropriate authorities for re-consideration of his case. The High Court by an interim order had called upon the State Government to reconsider his case. The State Government on reconsideration recommended for his appointment to the Indian Police Service from an anterior date. Finally, the Government of India in consultation with the

G Union Public Service Commission appointed said Shri Singh to the Indian Police Service with effect from 31.3.1976. It is under these admitted facts, the correctness of the decision of the Tribunal has to be decided upon. It is no doubt, true that in *Rizvi's* case (*supra*) this Court has observed that the year of allotment of an officer who was appointed to the service by promotion shall be determined in accordance with Rule 3(3)(b) of the

H Seniority Rules. But the Court was not faced with a situation as in the case

in hand, where the case of the promotee had been ignored from consideration, and on re-consideration the promotee has been appointed retrospectively with effect from 31.3.1976. In our considered opinion the Tribunal committed gross error in deciding the year of allotment of Shri Singh only by taking into consideration his date of continuous officiation in the senior post with effect from 30.3.1978 and ignoring the order of the Central Government on re-consideration appointing Shri Singh to the Indian Police Service with effect from 31.3.1976. As has been noticed earlier, under Sub-Rule (3) of Rule 6 of the Recruitment Rules, the initial appointment of a promotee to the Indian Police Service is in the senior time scale of pay. When Shri Singh was appointed to the Indian Police Service with effect from 31.3.1976 in the eye of law it must be held that he has been continuing in the senior post with effect from that date and therefore, his seniority *vis-a-vis* the direct recruits like respondent No. 4 cannot be determined by determining his factual officiation in a senior post with effect from 30.3.1978. The benefit conferred upon him on reconsideration and appointing him to the Indian Police Service retrospectively with effect from 31.3.1976 cannot be taken away for the purpose of determining his year of allotment and seniority in the cadre. The Central Administrative Tribunal, in our considered opinion, committed error in totally ignoring the effect of retrospective appointment of Shri Singh to the Indian Police Service with effect from 31.3.1976. Taking this into consideration the Central Government rightly determined the year of allotment of Shri Singh as well as *inter se* seniority *vis-a-vis* the respondent No. 4 Shri Ashwini Kumar in its letter dated 23rd July, 1985. In fact in *A.K. Chowdhary's* case (supra), in somewhat similar circumstances, this Court had directed for reconsideration of the case of the promotee and observed that on reconsideration if the employee is selected from any anterior date then he shall be entitled to the seniority and other consequential benefits flowing therefrom.

Seniority in the Service is governed by the year of allotment. Provisions for assignment of year of allotment are contained in Rule 3 of the Seniority Rules. In the Seniority Rules clause (a) of sub-rule (3) of Rule 3 makes provision for assignment of year of allotment to an officer who is appointed to the Service by direct recruitment. The year of allotment of such an officer is the year following the year in which the competitive examination (on the basis of which he was recruited) was held. In respect

A

B

C

D

E

F

G

H

A of officers who are appointed to the Service by promotion provision is made in clause (b) of Rule 3(3) which read as under :

B "(b) Where the officer is appointed to the Service by promotion in accordance with Rule 9 of the Recruitment rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former."

C This provision envisages assignment of the year of allotment to a promotee officer with reference to the year of allotment assigned to the junior-most among the officers recruited to the Service by direct recruitment who had officiated continuously in a senior post from a date earlier than the date of commencement of the officiation on a senior post in the Service by the promotee officer. In other words, for the purpose of seniority, a promotee officer is treated at par with a directly recruited officer who had been officiating in a senior post. This appears to be so for the reason that under Rule 6 of the Recruitment Rules the initial appointment of a person appointed by way of direct recruitment is in the junior time scale while the initial appointment of a person appointed to the Service by way of promotion from the State Police Service is in the senior time scale. The governing factor for assignment of year of allotment under Rule 3 (3)(b) is, therefore, the continuous officiation in a senior post by a directly recruited officer as well as the promotee officer.

F In service jurisprudence a distinction is made between a "substantive appointment" and an "officiating appointment". While substantive appointment confers on the person so appointed a substantive right to the post, an officiating appointment does not confer any such substantive right. The appointment on officiating basis is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post.

G Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or a substantive appointment being made to that permanent post in the latter case. An appointment on officiating basis, is from the very nature of such employment, itself of a transitory character and, under the ordinary law of

H master and servant, is terminable at any time. (See : *Parshotam Lal Dhingra*

v. *Union of India*, [1958] SCR 828 at p. 841-842). The expression "Officiated continuously in a senior post" in Rule 3(3)(b) of the Seniority Rules must, therefore, be construed to mean holding a senior post on officiating basis prior to substantive appointment on such senior post. Since a person cannot be treated as officiating on a post after he has been substantively appointed on that post, the said expression cannot be construed as referring to the period of officiation subsequent to the date of substantive appointment. For ascertaining the period of continuous officiation on a senior post, which is required to be taken into consideration for the purpose of assigning the year of allotment to a promotee officer, Rule 3(3)(b) has to be read with Explanation I wherein it has been prescribed that in respect of an officer appointed to the Service by promotion for the purpose of determination of his seniority the period of his continuous officiation in a senior post shall count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post which-ever is later. Thus two conditions are required to be fulfilled : (i) inclusion of the name in the Select List prepared for the purpose of promotion under the Recruitment Rules and Promotion Regulations; and (ii) Continuous officiation on a senior post. Explanation I postulates that both these conditions must co-exist for a promotee officer to take the benefit of continuous officiation in a senior post from the date prior to the date of his substantive appointment.

But there may be a situation when a person is appointed to the Service by promotion without his having officiated on a senior post prior to his substantive appointment. How is the year of allotment to be assigned to such an officer? A literal interpretation of Rule 3(3)(b) of the Seniority Rules would lead to the result that Rule 3(3)(b), when it talks of continuous officiation in a senior post, only envisages cases where an officer before his substantive appointment to the service has officiated in a senior post and it does not make any provision in respect of a situation where an officer is appointed substantively to the service without his having officiated in a senior post prior to his substantive appointment to the service. In other words, Rule 3(3)(b) suffers from 'casus omissus'. Before we reach this conclusion it may be pointed out that judicial decisions reveal two trends. One view, which reflects the traditional approach, is that the Court cannot legislate for casus omissus and that if there is a gap or an omission in the statute the lacuna cannot be supplied by the Court by judicial construction and that it is for the law making authority to remove the defect. (See : *Smt.*

- A *Hira Devi and Ors. v. District Board, Shahjahanpur*, [1952] SCR 1122 at p. 1131, and *Nalinakhya Bysack v. Shyamsunder*, [1953] SCR 533 at p.545). Here also the approach is that the Court cannot so interpret a statute to produce a casus omissus where there is really none. (See : *The Mersacy Docks & Harbour Board v. Penbusan Brothers*, (1885) 13 A.L. 595 at p. 602;
- B *State of Karnataka v. Union of India*, [1978] (2) SCR 1 at p. 65. The other view has been thus put forward forcefully by Denning, L.J., as the learned Master of Rolls then was in *Seaford Court Estates Ltd. v. Asher*, [1949] 2 All E.R. 155 :

- C "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then
- D do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases." (p. 164)

- E Again in *Magor & St. Mellons Rural District Council v. Newport Corporation*, [1951] 2 All E.R. 1226, the learned Judge has said :

- F "We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis." (at. 1236)

- G Although the said views of Lord Denning have not been approved by the House of Lords in *Magor & St. Mellons Rural District Council*, [1951] 2 All E.R. 839, they have been referred to with approval by this Court. (See : *State of Bihar v. A.K. Mukherjee*, [1975] (2) SCR 894 at p. 902; *State of Karnataka & Anr. v. M/s. Hansa Corporation*, [1981] (1) SCR at p. 833). The observations of Viscount Simonds in the House of Lords disapproving the observations of Denning, L.J. referred to above, have also been referred to with approval in *Punjab Land and Development Corporation v. Presiding Officer, Labour Court*, [1990] (3) SCR 111 at p. 153-154.

- H If Rule 3(3)(b) is so read as to effectuate the intention of the rule

making authority then the considerations referred to therein which apply in the matter of assignment of year of allotment in cases where an officer has officiated prior to the date of his substantive appointment, must necessarily apply for the purpose of assigning the year of allotment of an officer who has been substantively appointed without being required to officiate. In such a case his year of allotment will have to be determined with reference to the year of allotment of junior-most among the officers directly recruited to the service who officiated continuously in a senior post from a date earlier than the date of substantive appointment of the promotee officer. For that purpose the expression "Such officiation" in the context of the promotee officer in Rule 3(3)(b) will have to be construed as meaning "substantive appointment" in cases where the promotee did not officiate in a senior post before his substantive appointment to the service. The said construction would also govern a case, like the present one, where an officer has been wrongly denied promotion to the service and the said wrong is rectified later by the competent authority by appointing the officer who was denied promotion with effect from the date on which he should have been so appointed by way of promotion. Such an officer may have officiated in a senior post prior to the passing of the order of substantive appointment but he may not have officiated in a senior post prior to the date from which he has been substantively appointed. Once the error in the matter of his promotion is rectified and he has been given substantive appointment from an anterior date on which he should have been promoted the year of allotment has to be assigned to him having regard to the date from which his substantive appointment becomes operative even though he did not officiate in a senior post prior to the said date of substantive appointment. His year of allotment cannot be depressed on the basis that he had started officiating on a senior post from a date later than the date with effect from which he has been substantively appointed to the Service.

We arrive at the same result if we proceed on the basis that there is a casus omissus in Rule 3(3)(b) in the matter of assignment of year of allotment for an officer appointed by promotion who has not officiated prior to his substantive appointment to the Service and the said omission cannot be filled by the Court by judicial interpretation. This would only mean that the Seniority Rules are silent in the matter of assignment of year of allotment of such a promotee officer. In that event the competent authority can assign the year of allotment to such an officer in exercise of

- A its administrative discretion. (See : *Sant Ram Shanna v. State of Rajasthan*, [1968] (1) SCR at p. 119). The order dated July 23, 1985 passed by the Central Government assigning the year of allotment to Shri O.S. Singh has to be treated as passed by to Central Government in exercise of its administrative discretion. The only question that would arise in respect of
- B such an order is whether in the exercise of its administrative discretion the Central Government has acted arbitrarily. Having regard to the facts and circumstances of the case, it is not possible to take the view that in the matter of assignment of year of allotment of Shri O.S. Singh the Central Government has acted arbitrarily. The Central Government appears to have followed the scheme underlying Rule 3(3)(b) and has assigned the
- C year of allotment on the basis of the date on which the substantive appointment of Shri O.S. Singh become operative keeping in view the year of allotment of the junior-most directly recruited officer who officiated continuously in a senior post from a date earlier than the date of such substantive appointment of Shri O.S.Singh.

- D In view of our conclusion, as aforesaid, the impugned judgment of the Central Administrative Tribunal is set aside and the year of allotment as well as *inter se* seniority between Shri Singh and Ashwini Kumar, as determined by the Central Government in its letter dated 23rd July, 1985, is restored. It must be held that the year of allotment of Shri Singh is 1970
- E and he is to be treated senior to Shri Ashwini Kumar. Both these appeals are accordingly allowed and in the circumstances with no order as to costs.

I.M.A.

Appeals allowed.